

Navigating the Permitting Process for Large Projects in Alaska



AK Oil & Gas Congress, Anchorage, AK

Sep 21, 2016

Presented By:

Sara Longan, *Executive Director*, Office of Project Management and Permitting, Alaska Department of Natural Resources

Government Coordination is KEY

Office of Project Management & Permitting

OPMP coordinates:

- Oil & Gas
- Large Mine Projects Team
- Transportation
- Renewable Energy,
Hydroelectric
- Federal Planning



OPMP Authority

OPMP coordinates permitting of natural resource development projects in accordance with AS 38.05.020(b)(9):

The commissioner may lead and coordinate all matters relating to the state's review and authorization of resource development projects.

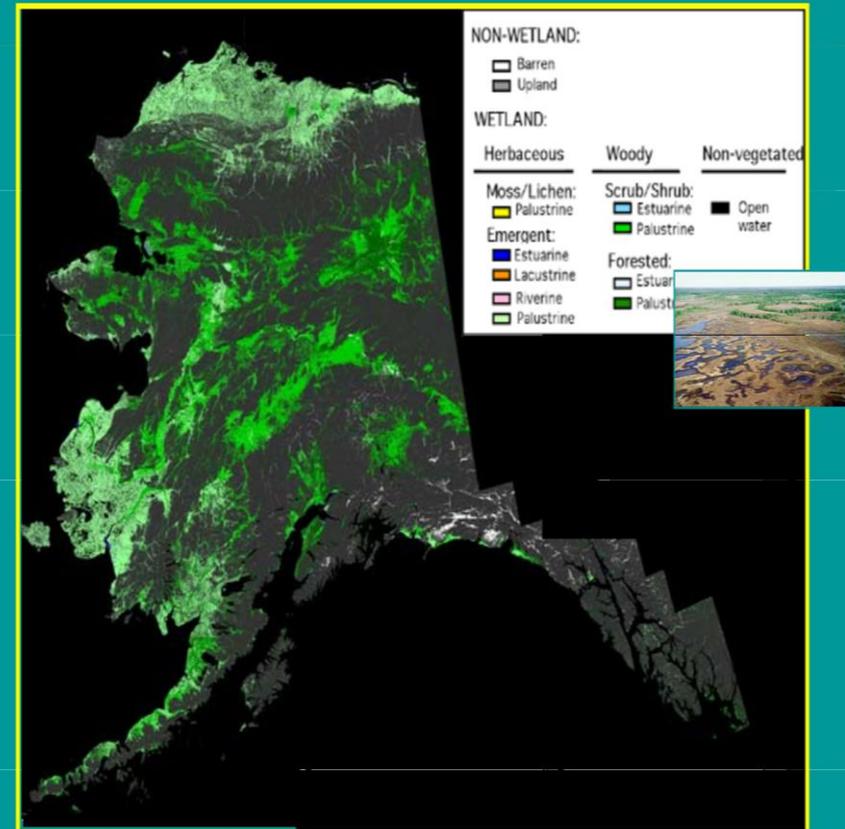
- OPMP is located in the DNR Commissioner's Office
- OPMP coordination is voluntary, reimbursable expense
- OPMP does not have regulatory authority

Regulatory Interests

Clean Water Act 404 Mitigation

- Administered by U.S. Army Corps of Engineers
- Avoid, Minimize, Mitigate Impacts to Aquatic Resources
- 2008 Mitigation Rule
- Alaska is Unique
- 1994 AK Wetlands Initiative
- Regulatory Guidance Cost

Alaska Wetlands Map from Satellite L-Band Synthetic Aperture Radar



A 100-meter resolution wetlands map of Alaska has been developed using JERS-1 SAR imagery. Whitcomb, Moghaddam, McDonald, Kellendorfer, and Podest, 2009

Emerging Regulatory Interests

Presidential Memo on Mitigation

- Issued November 3, 2015
- “Mitigating Impacts on Natural Resources from Development and Encouraging Private Investment”
- Departments of Agriculture, Defense, Interior - - the EPA, NOAA
- To avoid and then minimize harmful effects to land, water, wildlife, and other ecological resources (natural resources) - - no net loss
- To be implemented on a “landscape-level”
- Alignment with existing mitigation requirements
- New definitions, terms subject to multiple interpretation:
“Irreplaceable natural resources” “Harmful impacts”
“Large-scale plan”

<https://www.whitehouse.gov/the-press-office/2015/11/03/mitigating-impacts-natural-resources-development-and-encouraging-related>

Emerging Regulatory Interests

USFWS Revised Mitigation Policy

- Mitigating adverse impacts of land and water developments on fish and wildlife, 1981
- Includes authority under the Endangered Species Act (ESA)
- Goal is to maintain (no net loss) or improve (net gain), landscape-level approach to integrate mitigation planning into broader, regional strategies
- Expansion of scope to include non-federal activities that may overlap with state and tribal authorities
- To mitigate impacts fish, wildlife, plants and their habitats (not just migratory birds, listed species, certain marine mammals, and inter-jurisdictional fish)
- Incompatible with existing federal law, e.g. under ESA Section 7(a)(2) Consultation...no jeopardy findings, possible “incidental take” 50 C.F.R. 402.02
- Questionable authority to require “net gain” under existing federal law

<http://www.fws.gov/home/feature/2016/pdfs/USFWS-ProposedRevisedMitigationPolicyFAQsFinal.pdf>

Emerging Regulatory Interests

BLM NPR-A RMS

- Feb 2015, BLM approved development of GMT-1
- Compensatory Mitigation Required in GMT-1 ROD
- BLM is Developing the NPR-A Regional Mitigation Strategy (RMS)
- Statewide Workshops, Stakeholder Outreach
- Sec. Jewell Issued Order 3330 in October 2013 – Improving Mitigation Policies and Practices, DOI

<http://www.blm.gov/ak/st/en/prog/NPR-A/RMS.html>

Regulating Non-Federal Oil & Gas Activities

- National Park Service Released FEIS - - violates the Alaska National Interest Lands Conservation Act (ANILCA), the AK exemption

- NPS authority to regulate state, private, and corporation lands? <https://parkplanning.nps.gov/document.cfm?documentID=72995>

- U.S. Fish & Wildlife Service Released FEIS
Improving abandonment practices and debris

- <https://www.fws.gov/refuges/oil-and-gas/rulemaking.html>

Permit Coordination

- *Executive Order 13580* – Interagency Working Group on Coordination of Domestic Energy Development and Permitting in Alaska
- *Executive Order 13563* – Improving Regulation and Regulatory Review
- Next Steps: Establish a Federal “OPMP-like” Central Permitting Coordination Office
 - *Executive Order* – Improving Performance of Federal Permitting and Review of Infrastructure Projects, developed Steering Committee on Permitting Review Process Improvement (July 2016 appointments)

